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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS,AAO,20 MASS, 3/F
Washington, D.C. 20536

File: WAC-01-151-52511

Office: California Service Center

Date:

MAY 14 2003

IN RE: Petitioner:
Beneficiary:

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Acting Director, California Service Center. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. § 1153(b)(4), to perform services as an assistant pastor.

The acting director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition.

On appeal, counsel submits additional evidence to establish that the beneficiary was actively and continuously engaged in pastoral duties during the two-year period

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in § 101(a)(27)(C) of the Act, 8 U.S.C. § 1101 (a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

- (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

8 C.F.R. § 204.5(m)(1) states, in pertinent part:

Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States. The alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination, working for the organization at the organization's request in a professional capacity in a religious vocation or occupation for the organization or a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 at the request of the organization. All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.

At issue in this proceeding is whether the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition.

The petition was filed on March 22, 2001. Therefore, the petitioner must establish that the beneficiary was working continuously as an assistant pastor from March 22, 1999 until March 22, 2001. The record indicates that the beneficiary last entered the United States as a B-2 visitor on September 2, 2000. The petition, Form I-360, indicates that the beneficiary has not worked in the United States without permission.

In a letter dated March 16, 2001, the petitioner stated that the beneficiary was a graduate of the Korean Nazarene University in Korea where he majored in theology from 1987 to 1994, he was ordained as a minister of the Nazarene Church in March 1997, and has been employed as a minister at [REDACTED] Chunan City, Korea since December 1998. The petitioner described the beneficiary duties at the petitioning church as:

Conduct Christian worship services at our church for Korean congregation and at individual members's [sic] residences, prepares and deliver sermons and instruct people who seek conversion to faith. Conduct wedding and funeral services, counsel those who are in spiritual need, oversee religious educational programs such as Sunday school.

In response to a request for additional evidence, the petitioner provided a letter from the foreign church, [REDACTED], which described the beneficiary's duties as an assistant pastor from March 22, 1999 to August 2000 as:

Administrative and clerical work for church and evangelical work/service, lead Wednesday worship service, transportation service, lead Friday cell group worship service, lead bible study for student and young adults, Sunday school, attended evening worship services and visited families.

On appeal, the petitioner submits another letter from the foreign church which reiterates the beneficiary's employment as its assistant pastor and addresses the beneficiary's volunteered duties at the petitioning church. The petitioner also provided a letter from the beneficiary's sister who claims to have financially supported the beneficiary since his arrival in the United States. The petitioner asserts that upon arrival in the United States, the beneficiary "kept himself busy visiting and touring our Korean churches in our district.," The petitioner further asserts, in pertinent part:

In October 2000, we have asked Rev. [REDACTED] to help us out as an associate pastor because of heavy work load at our church with ever increasing Korean congregation. Rev. [REDACTED] agreed to perform pastoral duties although he could not be compensated for his services because he was not authorized to be so employed by the U.S. Immigration Service. However, Rev. [REDACTED] gladly accepted the challenged on a voluntary basis.

The regulatory definition of a minister at 8 C.F.R. § 204.5(m)(2) specifically excludes lay preachers, and the petitioner has not established that the beneficiary is an actual ordained minister, or that he is qualified to perform services as a pastor, as required by 8 C.F.R. § 204.5(m)(3)(ii)(B). The record contains a copy of an ordination certificate indicating that the beneficiary was ordained as an elder in 1997, but the record contains no evidence that he has ever been ordained as a minister. Elders are not generally salaried employees of a church. Further, the Bureau has no means to verify letters purportedly submitted by a foreign church.

The pertinent regulations were drafted in recognition of the special circumstances of some religious workers, specifically those engaged in a religious vocation, in that they may not be salaried in the conventional sense and may not follow a conventional work schedule. The regulations distinguish religious vocations from lay religious occupations. 8 C.F.R. § 204.5(m)(2) defines a religious vocation, in part, as a calling to religious life evidenced by the taking of vows. While such persons are not employed *per se* in the conventional sense of salaried employment, they are fully financially supported and maintained by their religious institution and are answerable to that institution. The regulation defines lay religious occupations, in contrast, in general terms as an activity related to a "traditional religious function." *Id.* Such lay persons are employed in the conventional sense of salaried employment. The regulations recognize this distinction by

requiring that in order to qualify for special immigrant classification in a religious occupation, the job offer for a lay employee of a religious organization must show that he or she will be employed in the conventional sense of salaried employment and will not be dependent on supplemental employment. See 8 C.F.R. § 204.5(m)(4). Because the statute requires two years of continuous experience in the same position for which special immigrant classification is sought, the Bureau interprets its own regulations to require that, in cases of lay persons seeking to engage in a religious occupation, the prior experience must have been full-time salaried employment in order to qualify as well.

In evaluating a claim of prior work experience, the Bureau must distinguish between common participation in the religious life of a denomination and engaging continuously in a religious occupation. It is traditional in many religious organizations for active members to volunteer a great deal of their time serving on committees, visiting the sick, serving in the choir, teaching children's religion classes, and assisting the ordained ministry without being considered to be carrying on a religious occupation. It is not reasonable to assume that the petitioning religious organization, or any employer, could place the same responsibilities, control of time, and delegation of duties on an unpaid volunteer as it could on an employee. Nor is there any means for the Bureau to verify a claim of past "volunteer work" similar to verifying a claim of past employment. For these reasons, the Bureau holds that lay persons who perform volunteer activities are not engaged in a religious occupation and that their voluntary activities do not constitute qualifying work experience for the purpose of an employment-based special immigrant visa petition.

In this case, the beneficiary's duties as a full-time volunteer with the petitioning church from September 2000 through March 2001 is insufficient to establish that the beneficiary was engaged in a religious occupation. Further, the beneficiary's work abroad has not been shown to be in a religious vocation or occupation. Therefore, it has not been established that the beneficiary has been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition. For this reason, the petition may not be approved.

Beyond the discussion in the director's decision, the petitioner has failed to demonstrate eligibility on another ground. The petitioner has failed to demonstrate that it has the ability to pay the proffered wage pursuant to 8 C.F.R. § 204.5(g)(2). As the appeal will be dismissed on the grounds discussed, this issue need not be examined further.

In reviewing an immigrant visa petition, the Bureau must consider the extent of the documentation furnished and the credibility of that documentation as a whole. The petitioner bears the burden of proof in an employment-based visa petition to establish that it will employ the alien in the manner stated. See *Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966); *Matter of Semerjian*, 11 I&N Dec. 751 (Reg. Comm. 1966).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.